

HOUSE BILL REPORT

ESSB 5808

As Passed House:

April 1, 2009

Title: An act relating to the annexation of unincorporated areas served by fire protection districts.

Brief Description: Concerning the annexation of unincorporated areas served by fire protection districts.

Sponsors: Senate Committee on Government Operations & Elections (originally sponsored by Senator Fairley).

Brief History:

Committee Activity:

Local Government & Housing: 3/19/09, 3/23/09 [DP].

Floor Activity

Passed House: 4/1/09, 63-34.

Brief Summary of Engrossed Substitute Bill

- Revises state law regarding city annexations and incorporations involving fire protection districts, fire departments, multiple cities, and unincorporated areas. The provisions of the act address: (1) specified notice requirements for fire protection personnel facing a proposed annexation; (2) the civil service rights of fire protection employees subject to the annexation; (3) annexation through an interlocal agreement among the parties to the annexation; (4) annexation petition requirements; (5) maintenance of fire protection levels during the annexation process and; (6) fire safety impact reporting.

HOUSE COMMITTEE ON LOCAL GOVERNMENT & HOUSING

Majority Report: Do pass. Signed by 6 members: Representatives Simpson, Chair; Nelson, Vice Chair; Miloscia, Springer, White and Williams.

Minority Report: Do not pass. Signed by 4 members: Representatives Angel, Ranking Minority Member; Cox, Assistant Ranking Minority Member; Short and Upthegrove.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Thamas Osborn (786-7129)

Background:

Fire Protection Districts.

Fire protection districts are created to provide fire prevention, fire suppression, and emergency medical services within a district's boundaries. Fire protection districts are governed by a board of commissioners consisting of either three or five members. The districts finance their activities and facilities by imposing regular property taxes, excess voter-approved property tax levies, and benefit charges.

Annexations: Employment and Civil Service Protections for Fire Protection District Employees.

When a city, code city, fire protection district, or unincorporated area is subject to annexation or incorporation by a city, state law provides specified employment rights to a fire protection district employee from the annexed area regarding transferring his or her employment to the fire department of the annexing city. If such an employee is capable of performing the duties and meeting the minimum requirements of a position to be filled by the fire department of the annexing city, then the eligible employee may transfer his or her employment to the annexing city in accordance with statutory civil service regulations. Under these regulations, the eligible employee must first make a written request to transfer into the civil service system of the annexing city. Once the Civil Service Commission receives an employee's written request to transfer employment the transfer must be made. Transferred employees are placed on probation for the same period as new employees of the fire department of the annexing city or town. An employee on probation can be removed from his or her position for virtually any reason unless the individual has already completed a probationary period as a firefighter prior to the transfer, in such case termination must be for cause.

During this probationary period the employee: (1) is eligible for promotion before the probationary period ends; (2) receives a salary at least equal to that received by new employees of the annexing city in the position filled; and (3) will have the rights, benefits, and privileges to which the employee would be entitled as a member of the city fire department from the beginning of his or her employment with the annexed fire department or fire protection district. Accrued benefits are transferable so long as the receiving agency offers comparable benefits.

Only transferring employees that are needed will be placed on the payroll. The fire department determines the need, and employees are taken in order of seniority. Employees who are not transferred and were not needed are placed on a re-employment list, in order of seniority, for future employment in the civil service system. Employees placed on the re-employment list remain on that list for a period no longer than three years unless there is an agreement providing otherwise.

Interlocal Agreements.

Under the Interlocal Cooperation Act (ICA), chapter 39.34 RCW, "public agencies," including cities and counties, are granted broad authority to engage in joint or cooperative actions that may include the consolidation or merger of a broad range of functions and/or structures. The ICA specifically states that: (1) "Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state having the power or powers, privilege or authority..."; and that (2) "Any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the provisions of this chapter..." Accordingly, the ICA is often utilized by cities and counties to engage in cooperative activities and agreements with respect to law enforcement, fire protection, public utility administration, etc.

The ICA defines "public agency" to include any agency, political subdivision, or unit of local government. The term includes municipal corporations, counties, special purpose districts, local service districts, state agencies, federal agencies, recognized Indian tribes, as well as other states' political subdivisions.

City Annexation of Unincorporated Area: Petition Method.

Cities are authorized to annex unincorporated areas through several alternative processes, including a resolution/election method, a petition/election method, and a direct petition method. Each method of annexation must follow specified processes set forth in statute. Under the direct petition method of annexation, the petition for annexation must be signed by owners of not less than 75 percent of the assessed value of the property subject to the annexation.

The Growth Management Act.

The Growth Management Act (GMA or Act) is the comprehensive land use planning framework for county and city governments in Washington. Enacted in 1990 and 1991, the GMA establishes numerous requirements for local governments obligated by mandate or choice to fully plan under the Act (planning jurisdictions) and a reduced number of directives for all other counties and cities.

The GMA includes numerous requirements relating to the use or development of land in urban and rural areas. Among other requirements, counties that fully plan under the GMA must designate urban growth areas (UGAs) or areas within which urban growth must be encouraged and outside of which growth can occur only if it is not urban in nature.

Summary of Bill:

Overview of the Act.

The act creates new statutes and amends numerous existing statutes pertaining to city and code city annexations and incorporations involving fire protection districts, multiple cities, and unincorporated areas. The provisions of the act address: (1) specified notice requirements for fire protection personnel facing a proposed annexation; (2) the civil service rights of fire protection employees subject to annexation; (3) annexation petition

requirements; (4) maintenance of fire protection levels during the annexation process; and (5) fire safety impact reporting. Hereafter, unless otherwise indicated, references to a "city" or "cities" means cities, towns, and code cities.

Employment and Civil Service Rights of Fire Department and Fire Protection District Employees Subject to Transfer Following an Annexation.

Unless an agreement for different terms of transfer is reached between the collective bargaining representatives of the transferring employees and the participating fire protection jurisdictions, a transferring employee is entitled to the employee rights, benefits, and privileges to which that employee would have been entitled as an employee of the annexed fire protection district or fire department, including rights to:

- compensation at least equal to the level of compensation at the time of transfer, unless the employee's rank and duties have been reduced as a result of the transfer;
- retirement, vacation, sick leave, and any other accrued benefits;
- promotion and service time accrual; and
- the length of terms of probationary periods, including no requirement for an additional probationary period if one had been completed before the transfer date.

Unless an agreement for different terms of transfer are reached, the benefits, rights, and privileges received by a transferring employee are subject to collective bargaining at the end of the current bargaining period for the jurisdiction to which the employee has transferred. Such bargaining must take into account the years of service the transferring employee accumulated before the transfer and must be treated as if those years of service occurred in the jurisdiction to which the employee has transferred.

Signature Requirements for the Petition Method of Annexation.

The property ownership signature requirement for annexation petitions under the direct petition method of annexation for classified cities is reduced from 75 percent to 60 percent.

Interlocal Agreements for Annexations of Areas that Include One or More Fire Protection Districts.

A city that is proposing to annex territory served by one or more fire protection districts may complete the annexation through the passage of an ordinance after entering into an interlocal agreement with the county and the fire protection district(s) that have jurisdiction over the territory proposed for annexation. The interlocal agreement process must be initiated by the city proposing the annexation and requires that the city send notice to the fire protection district representative and county representative stating the city's interest in entering an interlocal agreement negotiation process.

The interlocal agreement must describe the boundaries of the territory proposed for annexation. Under specified circumstances, the Boundary Review Board must be notified of the annexation and may invoke its jurisdiction for review.

A supplemental interlocal agreement may be negotiated to address issues for a specific annexation if the issues are not sufficiently addressed in the initial, general interlocal

agreement. The term of the agreement must be for a term of at least five years, which may be extended by mutual agreement of the parties.

An interlocal annexation agreement must include a statement of the goals of the agreement. The subject matter that must be addressed in the goals statement includes:

- the transfer of revenues and assets between the fire protection district(s) and the city;
- the consideration of the impact on the level of service to the unincorporated area as the result of the annexation;
- an agreement that the functional ability of the fire protection and emergency medical services within the incorporated area must not be negatively impacted at least through the budget cycle in which the annexation occurs;
- a discussion with the fire protection district(s) regarding the division of assets and its impacts on citizens inside and outside the newly annexed area;
- community involvement, including an agreed-upon schedule of public meetings in the area proposed for annexation;
- revenue sharing, if any;
- debt distribution; and
- an overall schedule or plan on the timing of the annexation covered by the agreement.

An interlocal annexation agreement must also include the subject areas, policies, and procedures the parties agree to undertake as part of the annexation, including:

- roads and traffic impact mitigation;
- surface and storm water management;
- annexation procedures;
- outstanding bonds and improvement district assessments;
- coordination and timing of comprehensive plan and development regulation updates; and
- financial and administrative services.

If the fire protection district, annexing city, and county reach an agreement on the enumerated goals, the annexation ordinance may proceed and is not subject to referendum. If only the annexing city and county reach an agreement on the enumerated goals, the city and county may proceed with annexation under the interlocal agreement, but the annexation ordinance is subject to referendum for 45 days after its passage.

Notice to Fire Protection District Employees of Proposed Annexation or Incorporation.

If any portion of a fire protection district is proposed for annexation or incorporation into a city, both the fire protection district and the annexing/incorporating municipality must inform fire protection district employees about hires, separations, terminations, and any other changes in employment that will be a direct consequence of the proposed annexation or incorporation.

Maintenance of Fire Protection and Emergency Services During the Annexation Process.

Cities annexing all or part of fire protection districts must, at least through the budget cycle in which the annexation occurs, or the following budget cycle if the annexation occurs in the last half of the current budget cycle in which the annexation occurs, maintain existing fire

protection and emergency services response times in the newly-annexed areas consistent with response times recorded prior to the annexation as defined in the previous annual report for the fire protection district. If the city or town is unable to maintain these service levels in the newly annexed area, the transfer of firefighters from the annexed fire protection district as a direct result of the annexation must occur pursuant to specific civil service requirements set forth in the act.

Annexations and Fire Safety Impact Reporting.

Upon the written request of a fire protection district, and prior to completing the annexation, cities annexing territory under this chapter must issue a report regarding the likely effects that the annexation and any associated asset transfers may have upon the safety of residents within and outside the proposed annexation area. The report must address the provisions pertaining to fire protection and emergency medical services within and outside of the proposed annexation area. A fire protection district may only request a report under this section when at least 5 percent of the assessed valuation of the fire protection district will be annexed.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill provides a comprehensive approach to resolving longstanding issues regarding annexations and is the culmination of years of work by a variety of interest groups. It provides a new approach to annexations that encourages a collaborative process among the various public entities involved in the annexation process. The bill would serve to eliminate the contentiousness that has caused so much friction in the annexation process and prevented many desirable annexations from occurring. The interlocal agreement process provides an approach to annexation that protects the interests of counties, cities, fire protection districts, and the public in general, and which will therefore encourage the completion of annexations. Annexation transition issues are carefully addressed in the bill, including those relating to the provision of fire and emergency services.

The provisions of the bill protect the rights of voters insofar as they provide a referendum process that may be used if the annexation does not receive the approval of all parties involved in the interlocal agreement negotiation process. Furthermore, the annexation process provided in the bill is purely voluntary and cannot take place without the consent of several groups of local elected officials. If the voters oppose the annexation, then they can utilize the political process to make themselves heard and to put pressure on the officials that represent them. Also, the bill requires that the annexation process include public meetings and thus mandates community involvement.

The provisions of the bill have been fine tuned over a period of several years in a process that has involved an enormous amount of work and compromise on the part of many stakeholders. Attempts to amend the bill could result in the unraveling of the many delicate compromises and understandings that were reached in the process of creating this piece of legislation. Accordingly, efforts to amend this bill should be discouraged because the amendment process is likely to prevent the bill from passing.

(Opposed) The bill is profoundly undemocratic insofar as it represents an effort to remove voters from direct involvement in deciding the fate of their communities with respect to annexations. It reduces petition requirements and eliminates the right of a voter referendum. This legislation would ensure that the voice of the people takes a back seat to the desires of public officials and would make it much easier for local governments to complete hostile annexations that are contrary to the interests of those residing in the annexed area. Communities have repeatedly rejected annexation efforts and it is wrong for the Legislature to change the law so as to eliminate the ability of these communities to properly participate in the process. This bill violates the maxim that democracy requires the "consent of the governed," insofar as it creates a process that eliminates the necessity of such consent. Current law allows small communities to have a voice in the annexation process and this should not be changed by the Legislature. Most attempted annexations are unnecessary and unwanted, and that is why annexation efforts often fail.

Annexations often result in undesirable consequences for those living in the annexed areas. Seniors and low-income persons often cannot afford the taxation and regulatory burdens that generally accompany annexations. Many people face the prospect of financial problems and even losing their homes because they simply cannot afford the financial burdens that result when their homes are incorporated into a city. For most people, the burdens of annexation far outweigh the benefits.

Persons Testifying: (In support) Mark Brown, Cities of Vancouver, Battle Ground, Lacey, Longview, and Ridgefield; Ryan Spiller, Washington Fire Commissioners; Bud Sizemore, Washington State Council of Firefighters; Mike Brown, Washington Fire Chiefs; and Dave Williams, Association of Washington Cities.

(Opposed) Dave Terro; and Jim Cotter.

Persons Signed In To Testify But Not Testifying: None.